IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-10-2007

Coram

The Honourable Mr.Justice S.J.MUKHOPADHAYA
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.8836 of 2003
W.P.M.P.No.11314 of 2003

Union of India,
representing Integral Coach Factory,
I.C.F. Colony,
Chennai - 600 038. ... Appellant

Vs.

1. The Registrar,
Debt Recovery Appellate Tribunal
Chennai - 600 006.

2. Canara Bank,
Triplicane Branch,
Chennai - 600 005.

3. Ms.Kailash Metal Industry,
L-32/B, Bharathidasan Colony,
K.K.Nagar,
Chennai - 600 078.

4. B.Sreeramulu ... Respondents

This Writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari calling for the entire records of the first respondent in A.T.60 of 2000 order dated 11.3.2002 and quash the same.

For Petitioner : Mr.V.G.Sureshkumar

1st Respondent : Tribunal

For 2nd Respondent : Mr.M.Balachander

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O R D E R

N. PAUL VASANTHAKUMAR, J.

Prayer in the writ petition is to quash the order of the first respondent dated 11.3.2002, confirming the order of the Debt Recovery Tribunal, Chennai, dated 30.12.1998, ordering a sum of Rs.90,055.74 with 12% interest from the date of the plaint.

2. The brief facts necessary for disposal of this writ petition are as follows:

(i) The second respondent herein (hereinafter referred as the Bank) filed C.S.No.59 of 1992 before this Court for recovery of a sum of Rs.12,00,553.16 against the petitioner and respondents 3 and 4 herein. Out of the said amount, a sum of Rs.3,10,046.63 was claimed against the petitioner with interest at 15.5% per annum.

(ii) The fourth respondent herein, who is the proprietor of the third respondent Industry, approached the second respondent to grant them credit facility, inclusive of term loan, open cash credit and limit for discounting of supply of bills. The third respondent executed an irrevocable power of attorney in favour of the second respondent Bank, authorising the Bank to collect the bill amount from the drawee of the supply bills. The 4th respondent offered his immovable property as collateral security to the second respondent Bank.

(iii) The third respondent also executed a power of attorney in favour of the second respondent Bank on 29.9.1984, authorising the Bank to collect the money due to the third respondent and payable by the petitioner, for the goods supplied by the third respondent to the petitioner, which was also accepted by the petitioner.

(iv) The contention of the Bank was that the third respondent committed default. As against the petitioner, the contention was that in spite of the goods supplied by the third respondent to the petitioner viz., Integral Coach Factory, a sum of Rs.3,10,046.85 was due and payable in respect of the bills and therefore the petitioner administration is liable to pay the said amount to the Bank, who are the agents under the power of attorney dated 29.9.1984, duly authorising the amounts due for collection as per the bills.

(v) Petitioner submitted a reply admitting the power of attorney. The contention raised by the petitioner was that certain bills, against which claims were made by the Bank were already paid by the petitioner and only in respect of the four bills, the amounts were not paid since the goods supplied by the third respondent were not up to the specification as per the terms and conditions of the purchase orders. The goods were rejected by the petitioner and therefore the administration is not liable to pay the amount under the four purchase orders totalling Rs.90,055.74.

(vi) It was further contended that the Indian Railway Standard Conditions of Contract empowers the administration to withhold the export goods, which may be found to be defective and further stated that the third respondent is also liable to pay a sum of Rs.1,60,101/- to the

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petitioner and no amount is payable by the petitioner to the third respondent and consequently to the second respondent Bank, who is the agent to collect the amount.

3. The Debt Recovery Tribunal, Chennai, issued recovery certificate against the petitioner for a sum of Rs.90,055.74 with interest at 12% per annum. The petitioner filed appeal before the Debt Recovery Appellate Tribunal in AT-60/2000 and deposited a sum of Rs.25,000/- in compliance with the condition imposed by the first respondent. The Order of the Debt Recovery Tribunal was confirmed by the Debt Recovery Appellate Tribunal on 11.3.2002 against which the petitioner has filed the writ petition contending that the second respondent Bank, who is the agent of the third respondent is entitled to collect only a sum or sums of money that is due to the third respondent or may become due and payable by virtue of the bills issued, pursuant to the goods supplied by the third respondent to the petitioner. The power of attorney executed is subject to the terms of the contract between the third respondent and the petitioner in relation to supply of goods. As per the power of attorney executed, the second respondent is entitled to collect any sum that may become due and payable.

4. The purchase order and the tender schedule specify that special conditions of contract and the Indian Railway Standard Conditions of Contract are applicable to the transactions. Clause 3 of the special condition to contract provides that in case of improper supplies, the administration will be at liberty to reject the goods supplied, purchase the same in the open market at the risk and cost of the supplier. Clause 10 provides that any amounts due may, either be deducted from the supplier's bill or recovered from the supplier directly. Clause 2 gives liberty to the administration to reject the goods, if found improper. Clause 19 gives liberty to the administration to retain the amounts payable to the supplier in case of defective supply. Clause 2401 of the Indian Railway Standard conditions of contract, empowers the administration to exercise lien and withhold any amount due to the supplier.

5. Pointing out all these clauses in the agreement and the Indian Railway Standard Conditions of Contract, the petitioner contended that the amount due to the third respondent from the petitioner alone can be claimed by the second respondent Bank and the goods supplied by the third respondent being defective and not upto the specification in terms of the contract, petitioner has got every right to reject the same and withhold the bill and the second respondent Bank cannot have any further right than the one which can be exercised by the third respondent in demanding the payment and the Debt Recovery Tribunal as well as Debt Recovery Appellate Tribunal failed to consider these aspects and erroneously fixed the liability on the petitioner for the said amount of Rs.90,055.74 with 12% interest.

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6. The learned counsel for the petitioner submitted that the power of attorney executed by the third respondent on 29.9.1984 to the second respondent clearly states that the bank is authorised to directly receive the money due under such bills from the purchasers who are liable to pay under the bills. In view of the supply of defective goods or the goods of poor quality not according to the specifications prescribed under the contract, the four bills were withheld and the amounts claimed in the said bills are not due to the third respondent and payable to the third respondent and consequently the second respondent bank, who is an agent of the third respondent to receive the amount from the petitioner cannot have any better right to claim the amount from the petitioner. The learned counsel also submitted that the power of attorney is subject to the contract entered into between the petitioner and the third respondent and the third respondent cannot be permitted to breach the terms of the contract and the second respondent, who is the agent of the third respondent to receive the money has no locus standi to claim the amount from the petitioner, particularly when the said amount is not lawfully due to the third respondent.

7. The learned counsel for the second respondent Bank on the other hand submitted that the petitioner having received the bills from the third respondent as per the power of attorney executed by the third respondent to the bank which was authenticated by the petitioner, the amount is bound to be paid by the petitioner and it is open to the petitioner to recover the said amount from the third respondent, if the goods supplied are defective or not according to the specification. The learned counsel also cited the decision of the Supreme Court reported in (1969) 1 SCR 595 (Bharat Nidhi Ltd v. Takhatmal & Others) to support his contention.

8. We have considered the rival submissions made by the learned counsel for the petitioner as well as the second respondent Bank.

9. The facts in this writ petition are not very much in dispute. The sanction of loan to the third respondent by the second respondent Bank, execution of power of attorney to receive the sums payable to the third respondent from the petitioner by the second respondent are admitted. It is also an admitted fact that except the four bills, which were withheld by the petitioner due to the sub-standard quality and the goods supplied are not according to the specifications of the Indian Railway Standard Conditions of Contract, the petitioner has not released a sum of Rs.90,055.74 and withheld the same. Admittedly there is a contract entered into between the third respondent and the writ petitioner to supply the goods as per the Indian Railway Standard Conditions of Contract. As rightly contended by the learned counsel for the petitioner, clause 3 of the special conditions of contract empowers the administration to reject the goods supplied not according to the standard and supply the goods at the risk and cost of the supplier. Clause 19 enable the

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administration to retain the amount payable to the supplier in case of defective supply. The said contract is binding on the third respondent, who is admittedly the supplier. The power of attorney executed on 29.9.1984 between the third respondent and the second respondent also clearly states that the bank is authorised to directly receive the money due under such bills from the purchasers, who are liable to pay under the bills. It is also stated therein that the amount that is due to the third respondent and become payable to the third respondent shall be receivable by the second respondent bank.

10. In the light of the specific clause contained in the contract entered between the third respondent and the writ petitioner and the power of attorney executed between the third respondent and the second respondent, we are of the view that unless and until the amount is due and payable to the third respondent, the second respondent is not entitled to claim the said amount from the petitioner. Merely because the petitioner agreed to pay the amount due to the second respondent Bank, it cannot be said that the amount not payable to the third respondent and not due to the third respondent is bound to be paid by the petitioner to the second respondent. If such an interpretation is given to the said power of attorney deed, it will lead to unreasonable interpretation and the petitioner, who has no connection with the second respondent Bank, except to pay the amount payable to the third respondent will be forced to pay the same. The privity of contract between the third respondent and the petitioner is bound to be honoured. The learned counsel for the second respondent is not in a position to dispute the proposition that the third respondent is bound by the contract and supply the goods according to the specifications and if the goods supplied are not according to the specifications, the petitioner can reject the same and withhold the bill.

11. The decision cited by the learned counsel for the second respondent reported in (1969) 1 SCR 595 (Bharat Nidhi Ltd v. Takhatmal & Others) do not support the contention of the second respondent Bank, since it is held therein that a person owing money or holding funds belonging to the giver of the order is bound to pay the same to the power of attorney holder. In this case, we have specifically found that the petitioner is not bound to pay the amount claimed in the four bills to the tune of Rs.90,055.74 to the third respondent and the said amount having not payable to the third respondent, the second respondent Bank cannot claim the same from the petitioner merely on the ground of the power of attorney executed on 29.9.1985.

12. The reasoning given by the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal that the special standard goods supplied by the third respondent to the petitioner can be agitated only by the supplier and the petitioner is unsustainable as the said finding is contrary to the clause in the power of attorney, stated supra. The second respondent Bank is entitled to receive the money due and payable to the third respondent by the petitioner and once it is found that the

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petitioner is not bound to pay the said amount to the third respondent, the second respondent Bank cannot compel the petitioner to pay the said amount and recover the same from the third respondent.

13. In the light of our above conclusion we set aside the impugned order in the writ petition and we allow the writ petition.

14. The learned counsel for the petitioner submitted that a sum of Rs.25,000/- was deposited at the time when the appeal was filed before the Debt Recovery Appellate Tribunal and a further sum of Rs.25,000/- was deposited while complying with the conditions imposed by this Court while granting stay on 21.3.2003. The amount paid/deposited by the petitioner is bound to be refunded to the petitioner by the second respondent Bank within four weeks from the date of receipt of copy of this order.

The writ petition is allowed with the above direction. There will be no order as to costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

vr

To
1. The Registrar, Debt Recovery Appellate Tribunal
Chennai - 600 006.

2. Canara Bank,
Triplicane Branch,
Chennai 600 005.

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